

AN OVERVIEW OF PREVIOUS WORKING PARTY REPORTS

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1. A working party has been established to develop proposals for:
 - (a) improving the provision of information, funding and the prospects of success for those contemplating training for or entering the profession;
 - (b) reducing any barriers to such training or entry for students from minority groups or for students who are financially disadvantaged.
2. Successive committees have reviewed the issues facing those wishing to practice at the Bar. I have been asked to produce an audit of the reports made by previous working parties concerning access to the Bar and the financial support available for entrants to the Bar.
3. This paper summarises the recommendations made by previous working parties, and where possible it sets out the reasons given for rejecting certain proposals. **Tables 1** and **2** provide a brief summary of the various proposals made in each report. A summary of the arguments for and against the main proposals is contained in **Table 3**.
4. In preparing this document, I have had access to the following papers:
 - i) Report of the Bar Entry and Training Working Party, 1991 (**Taylor**)
 - ii) Report of the Working Party on Financing Entry to the Bar, July 1998 (**Goldsmith**)
 - iii) Financing Entry to the Bar, March 1999 (**Tuckey**)
 - iv) Committee to Review Financial Support for Entrants to the Bar, July 2002 (**Mountfield**)
 - v) Response of the Education and Training Committee, October 2002 (**Mountfield**)
 - vi) Bar Council Resolution, November 2002 (**Mountfield**)
 - vii) Taskforce on Funding Entry to the Bar, July 2002 (**Calvert-Smith**)
 - viii) First Draft of the Report of the Voluntary Scheme Appeals Committee, April 2005
 - ix) Arrangements for collecting contributions, June 2005 (**Southern**).
5. The reports recognise that entry to the Bar has been adversely affected by the following:
 - (i) Imposition of tuition fees
 - (ii) Removal of maintenance grants
 - (iii) Withdrawal of LEA support for the BVC year
 - (iv) Increasing fees for BVC courses
 - (v) The Bar's competitors increasingly offer generous packages of support and assured employment
 - (vi) The expansion of rights of audience.

Report of the Bar Entry and Training Working Party, 1991 (Taylor)

6. The primary focus of the Taylor report was admission to, and the provision of, vocational training. The key objective of vocational training was felt to be to produce sufficient people of “appropriate calibre” to sustain full careers as barristers.
7. Key recommendations:
 - (a) Entry to vocational training for the Bar should be led by the requirement for trained barristers
 - (b) There should be a limit on the number of candidates admitted to vocational training
 - (c) A selection scheme is necessary at the vocational training stage:
 - (i) Outstanding candidates should be admitted automatically
 - (ii) Candidates who are clearly unsuitable should be rejected automatically, but with a right of appeal
 - (iii) Candidates falling between these categories should be interviewed
 - (d) To be deemed a barrister, a person must have
 - (i) Achieved minimum academic standards
 - (ii) Passed vocational training
 - (iii) Completed pupillage
 - (iv) Been called to the bar
 - (e) Equality of information and opportunity should be available in good time to all candidates who seek to enter the vocational training course.
8. The report was critical of the ‘Open Door’ policy, for the following reasons:
 - (a) Valuable educational and financial resources will be wasted in training members who are unlikely to succeed
 - (b) The weaker qualifiers will suffer disappointment
 - (c) The public will suffer through the dilution of legal representation.

Report of the Working Party on Financing Entry to the Bar, July 1998 (Goldsmith)

9. The primary focus of the Goldsmith report was the increasing cost of entry to the Bar and the issues to which that gave rise. The primary objective of the Bar was felt to be to achieve excellence:

“The business of the Bar is the business of justice... For the Bar to survive, it will need to continue to demonstrate not merely great skill in advocacy, but a level of obvious and universally recognised excellence”

10. The report identified the cost of qualifying as the primary threat to the Bar. It recognised that the vocational training year creates the greatest financial hardship for potential barristers. It went on to consider a variety of options for improving funding for vocational training.

11. Key recommendations:

(a) Funding for the BVC year: Funding should be provided for 450-500 students for the BVC year

(b) Government Funding: Additional funding for vocational training might be available from the government. The Bar Council and BVC providers should press for action in 3 areas:

(i) *Integrated Course*

BVC providers should be encouraged to pursue the idea of an integrated law degree/ BVC (Northumbria University already offer this)

The Bar Council should support the efforts of institutions to obtain appropriate approval for such courses

(ii) *Recognition of the problem in planning for reform*

The Bar Council should have particular regard for the effect on young barristers and trainees in its representations on proposed government changes

The Bar Council should treat the effect on potential new barristers as a priority issue in drawing up its own proposals for change

(iii) *Loan scheme administration*

The profession should make use of loan schemes

The Inns' finances could be made to go further if instead of being paid outright as scholarships, it was used to pay the interest on loans to cover the BVC year

The profession should enter into discussion with the DFEE (as it then was) to consider the possibility of loan schemes being the subject of

arrangements for repayment together with, or by the same mechanism, of student loans

- (c) Chambers: Welcome the initiative of some sets of Chambers in advancing part of the pupillage awards during the BVC year. This is a practice which should be more widespread
 - (d) Chambers: Financing for the pupillage year should be increased to 500 pupils, at £10,000 minimum.
 - (e) Annual Subscriptions (Inns): The Inns should introduce a modest annual membership fee for their members, for the sole purpose of bolstering scholarship funds.
 - (f) Millennium Appeal: No objection to a concerted appeal to generate funds, but not confident that the appeal would succeed.
 - (g) Award Criteria: The Inns should each review their policies and criteria to ensure that award criteria have a greater degree of reference to need rather than solely merit
 - (h) Recruitment Timetable: Pupillage recruitment timetable should be moved forward to a date prior to that which students have to commit to the BVC.
12. The Report rejected the following suggestions:
- (a) Financial assistance for all BVC students: Unrealistic
 - (b) Bar Levy: Do not consider it to be a workable option, for the following reasons:
 - (i) The Bar Council would not have power to enforce it
 - (ii) The scheme faces much opposition
 - (c) “Training Fine” for those taking silk or elected to the Bench: Impractical.

Financing Entry to the Bar, March 1999 (Tuckey)

13. The focus of the Tuckey report was to examine the implications of the Goldsmith recommendations for the Inns of Court.
14. Key recommendations:
 - (a) Limit the total intake of each year's BVC to the number which the Bar considers it will have room for
 - (b) The Bar should fully fund students through training and pupillage
 - (c) Training levy, deductible as a business expense and collected with barrister's tax, would cover the cost of (b).
15. The report recognised that 14(a) required the introduction of a statutory power to limit student numbers, to which the government would also have to agree.
16. The Report rejected the following proposals:
 - (a) BVC Funding: The Goldsmith proposal that funding should be provided for 450-500 students for BVC year was felt to be objectionable on the basis that it substantially closes the open door policy
 - (b) Increased Scholarships: The report concluded that there was little scope for an increase in scholarships and awards by the Inns
 - (c) Annual Subscription: Unacceptable:
 - (i) It could not be made compulsory
 - (ii) Only a few hundred members of each Inn use the facilities
 - (iii) The library is used most heavily by students
 - (iv) Members provide assistance voluntarily
 - (v) Proposal would be met with considerable resistance
 - (vi) Chambers who are tenants of the Inn pay market rents
 - (vii) Administrative costs
 - (d) Millennium appeal: Untenable; 2 Inns already had appeals, and all of the Inns were doing what they could to raise money
 - (e) "Fines": This report rejected the idea of training fines for those taking silk or members elected to the Bench, on the basis that:
 - (i) This proposal is unfair

- (ii) Inns already impose a substantial charge upon election to the Bench
- (iii) It would not amount to a significant source of money
- (f) Loan scheme: Undesirable:
 - (i) Undesirable to increase student debt
 - (ii) Inns might be criticised if seen to be encouraging students to participate in such a scheme
 - (iii) More attractive to donors to offer outright awards
 - (iv) Unlikely to make any significant difference
- (g) Award Criteria: Unnecessary; each Inn already strikes a balance between need and merit when awarding scholarships
- (h) Pupillage: This report rejected the notion that the Bar should accept responsibility for ensuring that all those who successfully complete the BVC are enabled to secure pupillage, on the basis that it has large cost implications and is unrealistic.

Committee to Review Financial Support for Entrants to the Bar, July 2002 (Mountfield)

17. Key recommendations:
- (a) Bar Council Scheme – Bar Levy: Compulsory levy on barristers in private practice, in order to fund 400 scholarships of £8000 each, to cover the BVC
 - (i) Financed by an extension of annual fees for practising certificates, under s.46 of the Access to Justice Act 1999
 - (ii) Fee system should be based on a rule requiring declaration of gross income, made in confidence for this purpose alone (either to a trusted intermediary or to Chambers)
 - (iii) Main contribution should be made by barristers (in independent practice) with a gross income in excess of £100,000
 - (iv) Possible to make a small charge on those earning between £50,000 - £100,000, although this would not raise a significant amount
 - (v) In each case, the charge would be deductible for purposes of tax and National Insurance.
 - (b) Selection Process: On the lines of the former ICSL procedure
 - (c) Timing of Selection: Inns, the Bar Council and Chambers should be encouraged to make selection decisions early in the third year of the degree course
 - (d) Inns: Should be invited to use a single point of entry for students in order to simplify the process.
18. The Report rejected the following suggestions:
- (a) Government Support: No significant support is likely. There was nothing to suggest that government would agree to BVC providers adopting an integrated course, and increased public spending is unlikely
 - (b) Annual Subscriptions (Inns): Not practicable for the Inns to charge members annual subscriptions. It was further contended that the Inns simply do not have further funds with which to increase their support for BVC students
 - (c) Chambers: Not practicable to require all Chambers to carry the BVC costs, since some areas of the Bar (especially Crime) would find this a disproportionately heavy burden
 - (d) Fee increases based on length of call: This could place an excessive burden on experienced barristers operating in legal aid and other less prosperous sets

- (e) Interest-relief loan schemes: Rejected on the basis that:
 - (i) At best, it would be only a modest improvement on the present position
 - (ii) Banks' own lending arrangements normally offer favourable terms
- (f) Means Testing: The Bar Council Scheme should not operate through means-testing, for the following reasons:
 - (i) It would do nothing to meet the competition from solicitors (solicitors' firms do not means-test)
 - (ii) As the scheme would be statute-based, it would need to be based solely on objective criteria (otherwise there is a risk of a judicial review challenge)
 - (iii) For even relatively comfortable middle-class parents, the cost of the Bar is a formidable sum. If the scheme is to avoid excluding children of even many middle-class parents who would thereby be unable to regard the Bar as a possible career, the cut-off point would have to be set so high that the saving would be small
 - (iv) The issue of part-time earnings would need to be addressed: would the Bar Council wish to encourage, or to discourage, students from undertaking part-time work?
- (g) Selection Criteria-Pupillage: Making Bar Council support contingent on Chambers' pupillage offers is not a viable alternative:
 - (i) It would put under the spotlight Chambers' selection procedures
 - (ii) Discrimination problems might persist
 - (iii) Chambers have disparate selection methods
 - (iv) Many Chambers prefer to delay pupillage offers
- (h) Selection Criteria-Inns: The Bar Council should not make its awards to candidates based on selection by the Inns, because:
 - (i) The Inns' procedures would have to be amended so as to meet the statutory requirements of objectivity
 - (ii) It may not be appropriate for a scheme financed under the Bar Council's statutory powers to be delegated in this way.

Response of the Bar Council's Education and Training Committee, October 2002 (Mountfield)

19. Key recommendations:

- (a) Redirect annual subvention: The Inns' subvention to the Bar Council should be abolished immediately. The Bar Council should enter into a memorandum of understanding with the Inns to redirect the annual subvention, so that it could be used to supplement awards towards the BVC year
- (b) Increase in Bar Council subscriptions: Required to cover the costs in (a)
- (c) Increase in funding from Chambers and the Inns: Should be encouraged to fund the BVC year
- (d) Criteria: Awards should be means and merit based.

20. The Report rejected the following proposal:

- (a) Establishing a new system for the award of funding directly through the Bar Council, on the basis that the administrative cost would be approximately £500,000.

Bar Council Resolution, November 2002 (Mountfield)

21. The Bar Council rejected the Mountfield proposal to introduce a compulsory Bar levy, on the basis that it would not be acceptable to the Bar as a whole.

Taskforce on Funding Entry to the Bar, July 2002 (Calvert-Smith)

22. Following the controversial Mountfield Report, and the widespread resistance that came with it, the Calvert-Smith taskforce was commissioned to look at the issue in a calm and objective way. Unsurprisingly, the report does not propose the Bar levy be adopted, but instead recommends such a scheme should be voluntary.
23. Key recommendations:
- (a) Voluntary Scheme: The Bar Council should establish a voluntary scheme to enable members of the Bar to provide additional funds for scholarships
 - (b) Criteria: Additional funds should be distributed on the basis of merit and means; i.e. they should only be awarded to candidates who have merits but lack means
 - (c) Banding: The scheme should involve a form of banding, based on the varying levels of the existing subscriptions. This should be a recommended level of contribution and individuals could vary the amount, upwards or downwards, as they wished
 - (d) Statistical data: The Bar Council should collect information on those entering the various stages of training for the Bar, and keep under review patterns of entry. If any adverse trend were to be found, it would need to be investigated. Professional advice as to how best to undertake this research should be sought
 - (e) Inns: The Inns should adopt a common approach to the extent and way in which student means are considered when making awards
 - (f) Co-ordination: A body should be set up to work with the Inns and circuits to ensure more efficient focus of resources devoted to recruitment to the Bar
 - (g) Image: The body mentioned in (f) should aim to promote a positive image of the Bar
 - (h) Timetable: Chambers should adopt a pupillage recruitment timetable that enables those who have not commenced the BVC to know the outcome of interviews before commencement
 - (i) Chambers: Chambers should offer financial support for the BVC year, and the fact they do so should be widely publicised (e.g. through Olpas)
 - (j) BVC: BVC providers should review their policies in respect of the payment of fees and deposits, to ensure they do not disadvantage students who are unsuccessful in securing pupillage
 - (i) BVC providers should charge the same deposit
 - (ii) The deposit should be as low as possible

- (iii) Deposits should be refundable for those who have applied for but not obtained offers of pupillage
 - (iv) BVC providers should be encouraged to postpone the payment of half the fees of the course until after the summer season results are known
 - (k) E&T Committee: Should undertake a detailed review of the duration, content, level and delivery of the BVC (see paragraph 25 below)
 - (l) Bar Council: Should use its influence to keep BVC fees to a minimum
 - (m) Subvention: The Bar Council may consider consulting the Bar on redirecting the Inns' subvention to the Bar Council.
24. The Report rejected the following proposals:
- (a) Compulsory Bar Levy: Unjustifiable
 - (b) Disclosure: A voluntary scheme could not, and should not, involve disclosure of barristers' earnings.
25. Following the recommendation in paragraph 23 (k), the **Bell** Working Party was established to investigate the issues surrounding the BVC. The Bar Council's Education and Training Committee further launched a Consultation Paper: 'The Vocational Stage of Training for the Bar' (December 2005). The committee undertook a very detailed review of many aspects of the BVC, and made clear that it was keen to receive the views of the Bar before making any formal recommendations. The consultation closed in March 2006. In the light of the responses, the BSB's BVC sub-committee has instigated a review of the BVC to be completed by summer 2007. It is anticipated that the new BVC framework will be completed by summer 2008 and all BVC courses will be revised by summer 2009. The Bar Council's Training for the Bar Committee (TfBC) is also reviewing the BVC in the light of the responses to the consultation paper and comments by Committee members. Richard Wilson QC is preparing a paper setting out the views of the TfBC which will be put to the BSB in due course.

*First Draft of the Report of the Voluntary Scheme Appeals Committee, April 2005
(Kennedy)*

26. The Kennedy Committee was set up on the recommendation of the Voluntary Scheme Working Party (Purchas). It was set up to consider and take forward the recommendation made by Calvert-Smith that there should be a Voluntary Scheme to raise money for additional BVC scholarships.
27. Key recommendations:
 - (a) The recommendation made by Calvert-Smith for a Voluntary Scheme should be adopted
 - (b) Donations should be channelled through the existing Bar Council Scholarship Trust (thereby qualifying for Gift Aid)
 - (c) Funds should be distributed through the existing Inns mechanisms
 - (d) A provision for donations on a voluntary basis should be included in the request for payment for the annual practising certificate
 - (e) The initial target should be £500,000
 - (f) The scheme should be launched at the Bar Conference
 - (g) Promotional material is needed
 - (h) The scheme would benefit from having a small number of patrons.

Appeal Committee, Arrangements for collecting contributions, June 2005 (Southern)

28. Following the recommendation of the Kennedy report to take forward the Calvert-Smith proposals, the appeal committee was set up, with the Treasurer of the Bar Council as its head, to consider the workings of the voluntary scheme. The focus of the Southern report was to consider how best to maximise the amount which can be collected on a voluntary basis from members of the Bar to assist funding of students in the BVC year.
29. Key recommendations:
 - (a) Appeal for voluntary donations
 - (b) Donations should be sought in specified graduated amounts according to seniority
 - (c) Donations should be made with gift aid declarations to the Bar Council Scholarship Trust
 - (d) The money raised should be passed on to the Inns to distribute through their established arrangements for scholarships
 - (e) The appeal should take place in June.
30. The report concluded that an 'opt-out' arrangement is not possible, for the following reasons:
 - (a) It could only operate where payment is by direct debit (15% of subscribers)
 - (b) It would be a misuse of the direct debit
 - (c) The contributor would be required to take the active step of making a gift aid declaration in respect of a specific payment
31. The report concluded that the appeal should be made in June, rather than December/January because:
 - (a) There is no need to link the appeal with the December/ January payments
 - (b) Split payments may cause confusion and complexity
 - (c) Extra administration at the busiest time of year would be avoided
 - (d) It would be easier to tie up the gift aid declarations with the payments to which they relate
 - (e) The appeal would have greater prominence and transparency
 - (f) Additional work could be avoided without extra cost

- (g) It would be more productive.

Table 1. Summary of Key Recommendations

Taylor	Entry to vocational training for the Bar should be led by the requirement for trained barristers, and there should be a limit on the number of candidates admitted to vocational training
Goldsmith	Funding should be provided for 450-500 students for the BVC year
Tuckey	Limit the total intake of BVC students, and Bar to fully fund students through BVC and pupillage
Mountfield	Compulsory levy on barristers in private practice, with a gross income in excess of £100,000, in order to fund 400 scholarships of £8000 each, to cover the BVC
Education & Training Committee	Increased subscriptions Redirect subvention
Bar Council	Outright rejection of a compulsory Bar levy
Calvert-Smith	There should be a voluntary scheme to raise funds for additional BVC scholarships for those with merit and need
Kennedy	Voluntary scheme should be adopted
Southern	Voluntary scheme should be implemented and donations should be sought in specified graduated amounts

Table 2. Summary of Proposals

	Goldsmith	Tuckey	Mountfield	E&T C'ee	Bar Council	Calvert- Smith	Kennedy	Southern	Adopted?
Annual Subscription (Inns)	√	x	x						No
Bar Levy	x		√		x	x			No
Bar Council: Increased subscriptions				√					No
Bar Council: Collect statistical data						√			Yes
BVC review		√				√			Yes
Chambers: Pupillage award during BVC year	√					√			Many Chambers offer this
Chambers: Increased financing for the pupillage year	√		x						Minimum: £10,000 Some Chambers offer more
Integrated Course	√		x						No
Inns: Single point of entry			√			√			No
Loan Scheme	√	x	x						No
Millennium Appeal	√	x							No
Recognising the problem in planning for reform	√								
Redirect subvention				√		?			No
Scholarships: greater focus on need	√	x		√		√			Inns strike a balance
Training Levy		√							
“Training Fine”: Silks/ elected benchers	x	x							
Timetable	√		√			√			Some Chambers offer pupillage early
Voluntary scheme						√	√	√	

Key

√

Recommended

?

Ought to be considered

X

Rejected

Blank

Not considered

N/B. I have not included Taylor (1991) in the table, since it is of historical interest only

Table 3. Arguments For and Against Main Proposals

	Arguments For	Arguments Against
Annual Subscription (Inns)	<p>(1) Could produce a very significant increase in funds available</p> <p>(2) The Inns are one of the only clubs without an annual membership fee</p> <p>(3) Other than the entrance and call fee, members do not pay any charges for use of the facilities</p> <p>(4) The fees have not changed since 1977</p> <p>(5) Payment for meals is normal in other clubs who also charge annual membership fees</p> <p>(6) Many Chambers are outside the Inns, and so do not pay rent</p>	<p>(1) Barristers do pay other monies to the Inn (catering, rent, etc)</p> <p>(2) Those based away from London receive little benefit from the Inns' facilities</p> <p>(3) Library used mostly by students</p> <p>(4) Members provide assistance voluntarily</p> <p>(5) Would be met with considerable resistance</p> <p>(6) Enforcement is difficult</p>
Bar Levy	(1) Would produce a very significant increase in funds available	(1) Heavily opposed
Bar Council: Increased Subscriptions	(1) Could produce a significant increase in funds available	(1) May be met with considerable resistance
Chambers: Pupillage award during BVC year	(1) Improve diversity	(1) Some sets (especially Crime) prefer to wait to judge how applicants perform on BVC
Chambers: Increased financing for the pupillage year	<p>(1) Could produce a very significant increase in funds available</p> <p>(2) Improve diversity</p> <p>(3) Minimise the risk of students leaving the Bar for solicitors firms, etc</p>	(1) Some Chambers (especially Crime and Family) cannot afford it
“Training Fine”: Silks/ elected benchers	(1) Could increase funds by targeting those who can afford to pay	<p>(1) Not practical</p> <p>(2) Members already pay a fee on these occasions</p> <p>(3) Moral encouragement may be all that is needed</p>
Integrated Course	<p>(1) Cost-saving</p> <p>(2) Already offered (Northumbria)</p>	<p>(1) Government approval unlikely</p> <p>(2) Only a fraction of universities who provide law degrees are validated providers of the BVC</p>
Loan Scheme	<p>(1) Could increase the availability of assistance without increasing the overall cost</p> <p>(2) Practical problem could be overcome through use of the Student Loans Company</p>	<p>(1) Administration of debt collection is problematic</p> <p>(2) Undesirable to be seen to encourage students to take out loans</p> <p>(3) Donors likely to prefer donating for an outright award</p>
Millennium Appeal	(1) Could raise a considerable amount	<p>(1) Unlikely to succeed</p> <p>(2) Inns already do all they can to raise funds</p>
Means Tested Scheme	(1) Consistent with the ‘social obligation’ case for the Bar to assist those from less advantaged	(1) Would not address the problem of competition from solicitors’ firms

	backgrounds	<p>(2) If scheme is statutory based, it would need to be based on wholly objective criteria (otherwise there is a risk of judicial review)</p> <p>(3) Not clear whose means should be tested - parents or students?</p> <p>(4) To avoid leaving out of benefit a large proportion of potential students (those from the middle classes for whom the Bar fees may be a formidable sum), the threshold must be set at a high level of income</p> <p>(5) The saving from excluding those with parental income above such a level would be small</p>
Redirect Subvention	<p>(1) It is usual for the members of a self-regulating profession to bear the costs of regulating that profession</p> <p>(2) It would increase accountability if Bar Council subscriptions more closely reflected the true cost of running the Bar Council</p> <p>(3) The Inns' funds are to be used for the general benefit of the profession as a whole. The provision of scholarships encourage this</p> <p>(4) At present, money which could be used to increase scholarships is being used to subsidise the Bar Council</p> <p>(5) It is more appropriate to use the Inns' resources to target the most able and deserving students rather than to contribute to general costs incurred in regulating education & training for all potential recruits</p>	<p>(1) The Inns share with the governance of the profession as a whole, so it is appropriate they share the costs involved</p> <p>(2) The Inns' funds can properly be applied to all the legitimate purposes of the profession as a whole</p> <p>(3) A large percentage of the costs of the Bar Council are spent on regulation and discipline; historically a function of the Inns, and in which the Inns remain involved</p> <p>(4) The subvention is used for the BVC, CPD, law degree reviews, monitoring, promotion, etc. It is appropriate the Inns fund this</p>
Scholarships: Greater focus on need	(1) Those who need the most help would receive it	<p>(1) Need for objectivity</p> <p>(2) Merit just as important</p>
Training Levy	(1) Could produce a significant increase in funds available	
Timetable	(1) Reduce risk – students would know their position before embarking on an expensive course	(1) Some sets (especially Crime) prefer to wait to judge how applicants perform on BVC
Voluntary Scheme	<p>(1) Could produce a very significant increase in funds available</p> <p>(2) Would not be met with the same resistance as a compulsory levy</p>	(1) Unclear how many members would contribute